

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR

# SENATE BILL NO. 1066

93RD GENERAL ASSEMBLY

2006

4840S.04T

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## AN ACT

To repeal section 392.245, RSMo, and to enact in lieu thereof one new section relating to telecommunications companies.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 392.245, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 392.245, to read as follows:

392.245. 1. The commission shall have the authority to ensure that rates,  
2 charges, tolls and rentals for telecommunications services are just, reasonable  
3 and lawful by employing price cap regulation. Any rate, charge, toll, or rental  
4 that does not exceed the maximum allowable price under this section shall be  
5 deemed to be just, reasonable, and lawful. As used in this chapter, "price cap  
6 regulation" shall mean establishment of maximum allowable prices for  
7 telecommunications services offered by an incumbent local exchange  
8 telecommunications company, which maximum allowable prices shall not be  
9 subject to increase except as otherwise provided in this section.

10 2. A large incumbent local exchange telecommunications company shall  
11 be subject to regulation under this section upon a determination by the  
12 commission that an alternative local exchange telecommunications company has  
13 been certified to provide basic local telecommunications service and is providing  
14 such service in any part of the large incumbent company's service area. A small  
15 incumbent local exchange telecommunications company may elect to be regulated  
16 under this section upon providing written notice to the commission if an  
17 alternative local exchange telecommunications company has been certified to  
18 provide basic local telecommunications service and is providing such service, or  
19 if two or more commercial mobile service providers providing wireless two-way  
20 voice communications services are providing services, in any part of the small

21 incumbent company's service area, and the incumbent company shall remain  
22 subject to regulation under this section after such election.

23           3. Except as otherwise provided in this section, the maximum allowable  
24 prices established for a company under subsection 1 of this section shall be those  
25 in effect on December thirty-first of the year preceding the year in which the  
26 company is first subject to regulation under this section. Tariffs authorized  
27 under subsection 9 of this section shall be phased in as provided under such  
28 tariffs as approved by the commission.

29           4. (1) Except as otherwise provided in subsections 8 and 9 of this section  
30 and section 392.248, the maximum allowable prices for exchange access and basic  
31 local telecommunications services of a small, incumbent local exchange  
32 telecommunications company regulated under this section shall not be changed  
33 for a period of twelve months after the date the company is subject to regulation  
34 under this section. Except as otherwise provided in subsections 8 and 9 of this  
35 section and section 392.248, the maximum allowable prices for exchange access  
36 and basic local telecommunications services of a large, incumbent local exchange  
37 telecommunications company regulated under this section shall not be changed  
38 prior to January 1, 2000. Thereafter, the maximum allowable prices for exchange  
39 access and basic local telecommunications services of an incumbent local  
40 exchange telecommunications company shall be annually changed by one of the  
41 following methods:

42           (a) By the change in the telephone service component of the Consumer  
43 Price Index (CPI-TS), as published by the United States Department of Commerce  
44 or its successor agency for the preceding twelve months; **provided however,**  
45 **that if such a change in the CPI-TS for the preceding twelve months is**  
46 **negative, upon request by the company and approval by the commission**  
47 **for good cause shown, the commission may waive any requirement to**  
48 **reduce prices of exchange access and basic local telecommunications**  
49 **service and those existing prices shall remain the maximum allowable**  
50 **prices for purposes of this section until the next annual change. All**  
51 **revenues that are attributable to a CPI-TS reduction waiver shall be**  
52 **used for the purposes approved by the commission to benefit local**  
53 **exchange ratepayers in a specific exchange or exchanges, including but**  
54 **not limited to expanded local calling scopes; or**

55           (b) Upon request by the company and approval by the commission, by the  
56 change in the Gross Domestic Product Price Index (GDP-PI), as published by the

57 United States Department of Commerce or its successor agency for the preceding  
58 twelve months, minus the productivity offset established for telecommunications  
59 service by the Federal Communication Commission and adjusted for exogenous  
60 factors;

61 (2) The commission shall approve a change to a maximum allowable price  
62 **or make a determination regarding a request for waiver** filed pursuant  
63 to paragraph (a) of subdivision (1) of this subsection within forty-five days of  
64 filing of notice by the local exchange telecommunications company. An incumbent  
65 local exchange telecommunications company shall file a tariff to reduce the rates  
66 charged for any service in any case in which the current rate exceeds the  
67 maximum allowable price established under this subsection.

68 (3) As a part of its request under paragraph (b) of subdivision (1) of this  
69 subsection, a company may seek commission approval to use a different  
70 productivity offset in lieu of the productivity offset established by the Federal  
71 Communication Commission. An adjustment under paragraph (b) of subdivision  
72 (1) of this subsection shall not be implemented if the commission determines,  
73 after notice and hearing to be conducted within forty-five days of the filing of the  
74 notice of a change to a maximum allowable price, that it is not in the public  
75 interest. In making such a determination, the commission shall consider the  
76 relationship of the proposed price of service to its cost and the impact of  
77 competition on the incumbent local exchange telecommunications company's  
78 intrastate revenues from regulated telecommunications services. Any  
79 adjustments for exogenous factors shall be allocated to the maximum allowable  
80 prices for exchange access and basic local telecommunications service in the same  
81 percentage as the revenues for such company bears to such company's total  
82 revenues from basic local, nonbasic and exchange access services for the  
83 preceding twelve months.

84 (4) For the purposes of this section, the term "exogenous factor" shall  
85 mean a cumulative impact on a local exchange telecommunications company's  
86 intrastate regulated revenue requirement of more than three percent, which is  
87 attributable to federal, state or local government laws, regulations or policies  
88 which change the revenue, expense or investment of the company, and the term  
89 "exogenous factor" shall not include the effect of competition on the revenue,  
90 expense or investment of the company nor shall the term include any assessment  
91 made under section 392.248.

92 (5) An incumbent local exchange telecommunications company may

93 change the rates for its services, consistent with the provisions of subsections 2  
94 through 5 of section 392.200, but not to exceed the maximum allowable prices, by  
95 filing tariffs which shall be approved by the commission within thirty days,  
96 provided that any such rate is not in excess of the maximum allowable price  
97 established for such service under this section.

98           5. Each telecommunications service offered to business customers, other  
99 than exchange access service, of an incumbent local exchange telecommunications  
100 company regulated under this section shall be classified as competitive in any  
101 exchange in which at least two nonaffiliated entities in addition to the incumbent  
102 local exchange company are providing basic local telecommunications service to  
103 business customers within the exchange. Each telecommunications service  
104 offered to residential customers, other than exchange access service, of an  
105 incumbent local exchange telecommunications company regulated under this  
106 section shall be classified as competitive in an exchange in which at least two  
107 nonaffiliated entities in addition to the incumbent local exchange company are  
108 providing basic local telecommunications service to residential customers within  
109 the exchange. For purposes of this subsection:

110           (1) Commercial mobile service providers as identified in 47 U.S.C. Section  
111 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing  
112 basic local telecommunications service, provided that only one such nonaffiliated  
113 provider shall be considered as providing basic local telecommunications service  
114 within an exchange;

115           (2) Any entity providing local voice service in whole or in part over  
116 telecommunications facilities or other facilities in which it or one of its affiliates  
117 have an ownership interest shall be considered as a basic local  
118 telecommunications service provider regardless of whether such entity is subject  
119 to regulation by the commission. A provider of local voice service that requires  
120 the use of a third party, unaffiliated broadband network or dial-up Internet  
121 network for the origination of local voice service shall not be considered a basic  
122 local telecommunications service provider. For purposes of this subsection only,  
123 a "broadband network" is defined as a connection that delivers services at speeds  
124 exceeding two hundred kilobits per second in at least one direction;

125           (3) Regardless of the technology utilized, local voice service shall mean  
126 two-way voice service capable of receiving calls from a provider of basic local  
127 telecommunications services as defined by subdivision (4) of section 386.020,  
128 RSMo;

129 (4) Telecommunications companies only offering prepaid  
130 telecommunications service or only reselling telecommunications service as  
131 defined in subdivision (46) of section 386.020, RSMo, in the exchange being  
132 considered for competitive classification shall not be considered entities providing  
133 basic telecommunications service; and

134 (5) "Prepaid telecommunications service" shall mean a local service for  
135 which payment is made in advance that excludes access to operator assistance  
136 and long distance service;

137 (6) Upon request of an incumbent local exchange telecommunications  
138 company seeking competitive classification of business service or residential  
139 service, or both, the commission shall, within thirty days of the request,  
140 determine whether the requisite number of entities are providing basic local  
141 telecommunications service to business or residential customers, or both, in an  
142 exchange and if so shall approve tariffs designating all such business or  
143 residential services other than exchange access service, as competitive within  
144 such exchange. Notwithstanding any other provision of this subsection, any  
145 incumbent local exchange company may petition the commission for competitive  
146 classification within an exchange based on competition from any entity providing  
147 local voice service in whole or in part by using its own telecommunications  
148 facilities or other facilities or the telecommunications facilities or other facilities  
149 of a third party, including those of the incumbent local exchange company as well  
150 as providers that rely on an unaffiliated third-party Internet service. The  
151 commission shall approve such petition within sixty days unless it finds that such  
152 competitive classification is contrary to the public interest. The commission shall  
153 maintain records of regulated providers of local voice service, including those  
154 regulated providers who provide local voice service over their own facilities, or  
155 through the use of facilities of another provider of local voice service. In  
156 reviewing an incumbent local exchange telephone company's request for  
157 competitive status in an exchange, the commission shall consider their own  
158 records concerning ownership of facilities and shall make all inquiries as are  
159 necessary and appropriate from regulated providers of local voice service to  
160 determine the extent and presence of regulated local voice providers in an  
161 exchange. If the services of an incumbent local exchange telecommunications  
162 company are classified as competitive under this subsection, the local exchange  
163 telecommunications company may thereafter adjust its rates for such competitive  
164 services upward or downward as it determines appropriate in its competitive

165 environment, upon filing tariffs which shall become effective within the time lines  
166 identified in section 392.500. The commission shall, at least every two years, or  
167 where an incumbent local exchange telecommunications company increases rates  
168 for basic local telecommunications services in an exchange classified as  
169 competitive, review those exchanges where an incumbent local exchange carrier's  
170 services have been classified as competitive, to determine if the conditions of this  
171 subsection for competitive classification continue to exist in the exchange and if  
172 the commission determines, after hearing, that such conditions no longer exist for  
173 the incumbent local exchange telecommunications company in such exchange, it  
174 shall reimpose upon the incumbent local exchange telecommunications company,  
175 in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection  
176 4 of section 392.200 and the maximum allowable prices established by the  
177 provisions of subsections 4 and 11 of this section, and, in any such case, the  
178 maximum allowable prices established for the telecommunications services of  
179 such incumbent local exchange telecommunications company shall reflect all  
180 index adjustments which were or could have been filed from all preceding years  
181 since the company's maximum allowable prices were first adjusted pursuant to  
182 subsection 4 or 11 of this section.

183           6. Nothing in this section shall be interpreted to alter the commission's  
184 jurisdiction over quality and conditions of service or to relieve telecommunications  
185 companies from the obligation to comply with commission rules relating to  
186 minimum basic local and interexchange telecommunications service.

187           7. A company regulated under this section shall not be subject to  
188 regulation under subsection 1 of section 392.240.

189           8. An incumbent local exchange telecommunications company regulated  
190 under this section may reduce intrastate access rates, including carrier common  
191 line charges, subject to the provisions of subsection 9 of this section, to a level not  
192 to exceed one hundred fifty percent of the company's interstate rates for similar  
193 access services in effect as of December thirty-first of the year preceding the year  
194 in which the company is first subject to regulation under this section. Absent  
195 commission action under subsection 10 of this section, an incumbent local  
196 exchange telecommunications company regulated under this section shall have  
197 four years from the date the company becomes subject to regulation under this  
198 section to make the adjustments authorized under this subsection and subsection  
199 9 of this section. Nothing in this subsection shall preclude an incumbent local  
200 exchange telecommunications company from establishing its intrastate access

201 rates at a level lower than one hundred fifty percent of the company's interstate  
202 rates for similar access services in effect as of December thirty-first of the year  
203 preceding the year in which the company is first subject to regulation under this  
204 section.

205         9. Other provisions of this section to the contrary notwithstanding and no  
206 earlier than January 1, 1997, the commission shall allow an incumbent local  
207 exchange telecommunications company regulated under this section which  
208 reduces its intrastate access service rates pursuant to subsection 8 of this section  
209 to offset the revenue loss resulting from the first year's access service rate  
210 reduction by increasing its monthly maximum allowable prices applicable to basic  
211 local exchange telecommunications services by an amount not to exceed one dollar  
212 fifty cents. A large incumbent local exchange telecommunications company shall  
213 not increase its monthly rates applicable to basic local telecommunications service  
214 under this subsection unless it also reduces its rates for intraLATA interexchange  
215 telecommunications services by at least ten percent. No later than one year after  
216 the date the incumbent local exchange telecommunications company becomes  
217 subject to regulation under this section, the commission shall complete an  
218 investigation of the cost justification for the reduction of intrastate access rates  
219 and the increase of maximum allowable prices for basic local telecommunications  
220 service. If the commission determines that the company's monthly maximum  
221 allowable average statewide prices for basic local telecommunications service  
222 after adjustment pursuant to this subsection will be equal to or less than the long  
223 run incremental cost, as defined in section 386.020, RSMo, of providing basic local  
224 telecommunications service and that the company's intrastate access rates after  
225 adjustment pursuant to this subsection will exceed the long run incremental cost,  
226 as defined in section 386.020, RSMo, of providing intrastate access services, the  
227 commission shall allow the company to offset the revenue loss resulting from the  
228 remaining three-quarters of the total needed to bring that company's intrastate  
229 access rates to one hundred fifty percent of the interstate level by increasing the  
230 company's monthly maximum allowable prices applicable to basic local  
231 telecommunications service by an amount not to exceed one dollar fifty cents on  
232 each of the next three anniversary dates thereafter; otherwise, the commission  
233 shall order the reduction of intrastate access rates and the increase of monthly  
234 maximum allowable prices for basic local telecommunications services to be  
235 terminated at the levels the commission determines to be cost-justified. The total  
236 revenue increase due to the increase to the monthly maximum allowable prices

237 for basic local telecommunications service shall not exceed the total revenue loss  
238 resulting from the reduction to intrastate access service rates.

239           10. Any telecommunications company whose intrastate access costs are  
240 reduced pursuant to subsections 8 and 9 of this section shall decrease its rates  
241 for intrastate toll telecommunications service to flow through such reduced costs  
242 to its customers. The commission may permit a telecommunications company to  
243 defer a rate reduction required by this subdivision until such reductions, on a  
244 cumulative basis, reach a level that is practical to flow through to its customers.

245           11. The maximum allowable prices for nonbasic telecommunications  
246 services of a small, incumbent local exchange telecommunications company  
247 regulated under this section shall not be changed until twelve months after the  
248 date the company is subject to regulation under this section or, on an  
249 exchange-by-exchange basis, until an alternative local exchange  
250 telecommunications company is certified and providing basic local  
251 telecommunications service in such exchange, whichever is earlier. The  
252 maximum allowable prices for nonbasic telecommunications services of a large,  
253 incumbent local exchange telecommunications company regulated under this  
254 section shall not be changed until January 1, 1999, or on an  
255 exchange-by-exchange basis, until an alternative local exchange  
256 telecommunications company is certified and providing basic local  
257 telecommunications service in such exchange, whichever is earlier. Thereafter,  
258 the maximum allowable prices for nonbasic telecommunications services of an  
259 incumbent local exchange telecommunications company may be annually  
260 increased by up to five percent for each of the following twelve-month periods  
261 upon providing notice to the commission and filing tariffs establishing the rates  
262 for such services in such exchanges at such maximum allowable prices. This  
263 subsection shall not preclude an incumbent local exchange telecommunications  
264 company from proposing new telecommunications services and establishing prices  
265 for such new services. An incumbent local exchange telecommunications company  
266 may change the rates for its services, consistent with the provisions of  
267 subsections 2 through 5 of section 392.200, but not to exceed the maximum  
268 allowable prices, by filing tariffs which shall be approved by the commission  
269 within thirty days, provided that any such rate is not in excess of the maximum  
270 allowable price established for such service under this section.

271           12. The commission shall permit an incumbent local exchange  
272 telecommunications company regulated under this section to determine and set

273 its own depreciation rates which shall be used for all intrastate regulatory  
274 purposes. Provided, however, that such a determination is not binding on the  
275 commission in determining eligibility for or reimbursement under the universal  
276 service fund established under section 392.248.

277         13. Prior to January 1, 2006, the commission shall determine the  
278 weighted, statewide average rate of nonwireless basic local telecommunications  
279 services as of August 28, 2005. The commission shall likewise determine the  
280 weighted, statewide average rate of nonwireless basic local telecommunications  
281 services two years and five years after August 28, 2005. The commission shall  
282 report its findings to the general assembly by January 30, 2008, and provide a  
283 second study by January 30, 2011. If the commission finds that the weighted,  
284 statewide average rate of nonwireless basic local telecommunications service in  
285 2008 or 2011 is greater than the weighted, statewide average rate of nonwireless  
286 basic local telecommunications service in 2006 multiplied by one plus the  
287 percentage increase in the Consumer Price Index for all goods and services for the  
288 study periods, the commission shall recommend to the general assembly such  
289 changes in state law as the commission deems appropriate to achieve the  
290 purposes set forth in section 392.185. In determining the weighted, statewide  
291 average rate of nonwireless basic local telecommunications service, the  
292 commission shall exclude rate increases to nonwireless basic telecommunications  
293 service permitted under subsections 8 and 9 of this section and section 392.240  
294 or exogenous costs incurred by the providers of nonwireless basic local  
295 telecommunications service.

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